

EXHIBIT 5

Caridis, Alyssa

From: Peter Brasher [pbrasher@ghiplaw.com]
Sent: Tuesday, October 14, 2014 11:48 AM
To: Caridis, Alyssa
Cc: Randall Garteiser; Christopher Honea; bluespike@ghiplaw.com; Ramsey, Gabriel M.; Higgins, Christopher J.; Jacob, Johanna; Eric Findlay; Walter Lackey
Subject: Re: Blue Spike v. Audible Magic - Document Production

Alyssa,

Blue Spike is not currently withholding any non-privileged documents and will not withhold any of the non-privileged documents relating to the those nine general categories. Currently, documents responsive to the category of corporate documents including financial data are in the possession of our third-party vendor who is processing them for production purposes. As soon as our vendor has completed the job, we will make the production available to defendants.

In the alternative, to limit any prejudice that Audible Magic may encounter, Blue Spike is willing to make the documents available for inspection in person with sufficient notice. Many of the responsive documents pursuant to that particular request are only kept in physical form. We also have electronically stored documents on hard drives, compact disks, floppy disks, and cassettes. Please notify Blue Spike if you would like to have a representative come and inspect the documents. It should be noted that the documents you inspect will not be bates labeled as that process is currently under way, and will all bare the designation "Confidential - Outside Counsel Only."

With regard to the request for all documents related to the Giovanni Abstraction Machine, counsel for Blue Spike will verify the existence of any such documents with the client.

With regard to all requests, Blue Spike has not received any documents from Mike Berry, Greg Moskowitz, or Matt Ingalls who all may have additional documents relating to these categories in their possession, custody, or control.

Blue Spike is available to meet and confer tomorrow regarding these issues.

Regards,



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On Oct 14, 2014, at 12:18 PM, Caridis, Alyssa <acaridis@orrick.com> wrote:

Counsel,

You have refused to accept our offer to meet and confer and have otherwise not responded to any of the issues raised in my email. Accordingly, and as I indicated below, we will proceed to file our motion today at 4 p.m. Central.

Alyssa

From: Caridis, Alyssa

Sent: Friday, October 10, 2014 6:15 PM

To: 'Randall Garteiser'

Cc: Christopher Honea; Peter Brasher; bluespike@ghiplaw.com; Ramsey, Gabriel M.; Higgins, Christopher J.; Jacob, Johanna; Eric Findlay; Walter Lackey

Subject: RE: Blue Spike v. Audible Magic - Document Production

Randall,

We are unclear what you are asking for. Are you looking for Customer License and Services Agreements? If so, Audible Magic has produced such documents post-dating January 1, 2012. For example (and not meant to be exhaustive): AUDMAG00150892 (Facebook-Audible Magic Feb. 2012 agreement), AUDMAG00066313 (FC2-Audible Magic April 2013 supplement), AUDMAG00369550 (Dailymotion-Audible Magic June 2013 renewal agreement), AUDMAG00066597 (Zedge-Audible Magic January 2014 Agreement extension). These are readily identifiable using database searches. If you are looking for something else, please explain.

Regarding the depositions, we have been working to schedule the various individuals you recently noticed, and should have something for you early next week.

I appreciate you noting that Blue Spike will "look into this request." But I'm sure you understand that time is of the essence – particularly because Judge Craven issued her order a month ago. As demonstrated by my e-mail above, the exercise of checking whether documents have been produced is relatively straight forward. And considering that Blue Spike's production was made in direct response to an order to compel, you should be at least somewhat familiar with the documents that have been produced. The Blue Spike entities were ordered to produce certain documents, and we do not believe they have complied with that order. Unless you are able to show us otherwise, we will move forward with notifying the Court.

Alyssa

From: Randall Garteiser [<mailto:rgarteiser@ghiplaw.com>]

Sent: Friday, October 10, 2014 5:08 PM

To: Caridis, Alyssa

Cc: Christopher Honea; Peter Brasher; bluespike@ghiplaw.com; Ramsey, Gabriel M.; Higgins, Christopher J.; Jacob, Johanna; Eric Findlay; Walter Lackey

Subject: Re: Blue Spike v. Audible Magic - Document Production

We will look into this request. We've noticed that Audible Magic has not supplemented its licenses for the accused technology or correspondence related to such licenses. These documents are relevant to damages and second considerations of nonobviousness. Please advise whether Audible Magic will be producing those documents by October 14, or to the extent Audible Magic is taking the position that it has already produced these service agreements and related negotiations post January 1, 2012, please provide the Bates range.

Furthermore, Blue Spike is still awaiting three potential dates for each of the Rule 30(b)(1) deposition notices not including expert witnesses. Please advise by October 15, Wednesday, the dates for these deposition dates in October or we will need to meet and confer on this as well.

Be well,

Randall

On Oct 10, 2014, at 6:26 PM, "Caridis, Alyssa" <acaridis@orrick.com> wrote:

Counsel,

The Court's September 10, 2014 order required Blue Spike to produce "documents responsive to ... nine general categories of documents" by September 30. After reviewing the documents produced by Blue Spike to date, we believe Blue Spike's production to be deficient in a number of key respects. Given the immediate upcoming deadlines, we are limiting this letter to only two categories of documents. Audible Magic's decision to not address other topics in this e-mail does not preclude Audible Magic from later raising additional issues with Blue Spike's production.

"All documents related to the Giovanni Abstraction Machine." To date, Blue Spike has not produced any documents relating to the Giovanni Abstraction Machine. If we are mistaken, please point us to where in Blue Spike's production we can find such documents. If Blue Spike Inc., Blue Spike LLC, and/or Scott Moskowitz have no documents related to the Giovanni Abstraction Machine, please provide a verified confirmation of that fact by Wednesday, October 15. Absent such a verification, we will move forward with a motion for contempt.

"All documents related to the formation of and business practices of Blue Spike, Inc. and Blue Spike LLC, including ... financial data." It does not appear Blue Spike LLC has produced *any* financial data. And Blue Spike Inc. has only provided a handful of recent tax returns. Again, if we have missed any information in your production, please point it out immediately. Blue Spike has been on notice for well over a year that the financials of Blue Spike Inc and Blue Spike LLC will be relevant in this case. And a month ago, the Court confirmed this and ordered these documents produced. Blue Spike's refusal to produce these documents is inexcusable and extremely prejudicial to Audible Magic. Please provide your availability next Monday or Tuesday for a meet-and-confer on Audible Magic's planned motion for contempt.

Please also take notice that Audible Magic reserves the right to amend its forthcoming expert reports based on any late-produced documents.

Regards,
Alyssa Caridis

<image001.gif><image002.gif> **ALYSSA CARIDIS**
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